

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
37.80.101, 37.80.202, 37.80.203,)	ON PROPOSED AMENDMENT
37.80.301, and 37.80.501 pertaining to)	
the child care assistance program)	

TO: All Interested Persons

1. On July 12, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (2)(d) remain the same.

(3) A parent who is not making monthly payments on outstanding child care overpayments is not eligible for further child care assistance. Any parent who misses a payment as required by the terms of an overpayment repayment agreement or order and who does not become fully current in making all payments required under the agreement or order within the times described below will not be eligible to receive child care assistance until the parent has become fully current in making all payments required under the agreement or order, or unless the department has agreed to modify the payment schedule under the repayment agreement or order.

(a) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 90th day following the first missed payment. The period of ineligibility will begin on the 90th day following the first missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(b) Unless the department has agreed to a modified repayment schedule, a

parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 60th day following the second missed payment. The period of ineligibility will begin on the 60th day following the second missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(c) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 30th day following of the third missed payment. The period of ineligibility will begin on the 30th day following the third missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(d) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance when the parent has missed more than three payments, and the parent will not be eligible to receive further child care assistance until the parent has become fully current in making all payments required under the repayment agreement or order.

(4) through (13)(a) remain the same.

(b) the Montana Child Care Manual in effect on ~~May 1, 2005~~ May 1, 2006. The "Montana Child Care Manual", dated ~~May 1, 2005~~ May 1, 2006, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's child care assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box ~~202952~~ 202925, Helena, MT ~~59620-2952~~; 59620-2925; and, on the department's website at www.dphhs.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) through (13) remain the same.

~~(14) For the period beginning September 1, 2004, the household's monthly copayment shall be the amount specified in the department's child care assistance sliding fee scale as amended September 1, 2004. The sliding fee scale is adopted and incorporated by reference and shall be in effect beginning September 1, 2004. A copy of the sliding fee scale is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The household's size and income are taken into consideration in determining the copayment amount each household must pay.~~

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.203 REQUIREMENT TO REPORT CHANGES (1) through (2)(c) remain the same.

(d) training or school attendance, including changes to the location or hours of the training and circumstances regarding satisfactory progress; ~~and~~

(e) mailing address, residential address, and phone number; and

(f) any change in:

(i) compliance by the applicant or recipient with any order or determination of DPHHS Child Support Enforcement Division;

(ii) receipt of child support by the applicant or recipient pursuant to a district court order, including but not limited to changes in the frequency or amount of child support received; or

(iii) circumstances concerning good faith reasons for an applicant or recipient not to pursue child support enforcement through the department's Child Support Enforcement Division.

(3) and (4) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 53-2-108, 53-2-201, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) Child care facilities must be in compliance with applicable licensing and registration requirements as specified in ~~ARM 23.7.109 37.95.101, and 37.95.102~~ 37.95.1010, 37.95.1011, 37.95.1015, 37.95.1016, 37.95.1020, and 37.95.1021 to receive payment under this chapter. Loss of eligibility for funds under this chapter for failing to comply with child care facility licensing and registration requirements is in addition to other remedies available for such violations.

(2) through (4)(b)(ii) remain the same.

(iii) health, building, or fire officials investigating child care facility health and safety issues.

(5)(a) through (5)(b) remain the same.

(c) The provider shall make sign in/sign out records available to child care resource and referral agency staff and state and local government health, safety, or law enforcement representatives upon request.

(d) remains the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) through (1)(h) remain the same.

(i) the parent is no longer in compliance with an order or determination of the DPHHS Child Support Enforcement Division, the parent has failed to report a change in the amount of child support the parent receives pursuant to a district court

order that affects eligibility, or the parent has failed to report changes in circumstances concerning good cause reasons for the applicant or recipient not to pursue child support enforcement.

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), ~~or (g)~~, or (i), notice of termination must be sent to both the parent and the provider at least ~~40~~ ten days prior to the effective date of termination. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h).

(a) through (4) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

3. ARM 37.80.101 PURPOSE AND GENERAL LIMITATIONS

The department proposes to revise ARM 37.80.101(3) by which parents who fail to make monthly payments pursuant to child care overpayment repayment agreements or orders are not eligible to receive further child care assistance. To date, the department has not specified a time frame for ineligibility on these grounds, and parents have been able to wait up to 90 days between each payment of an overpayment before they would lose eligibility for child care assistance. In order to prevent this practice, the department proposes amending (3) to set forth an appropriate graduated 90 day, 60 day, and 30 day time frame for ineligibility, by which assistance can be terminated within progressively shorter periods of time following each episode of a parent failing to make a required payment for an overpayment. Under this proposed rule change, absent prior agreement by the department, a parent will become ineligible if the parent does not come into full compliance with the agreement or order within 90 days of the date the parent first fails to make a required payment, within 60 days of the date the parent fails for the second time to make a required payment, within 30 days of the date the parent fails for the third time to make a required payment, and immediately upon the parent failing for more than three times to make a required payment. No fiscal impact is anticipated with this rule change.

ARM 37.80.101(13)(b) adopts and incorporates by reference the Montana Child Care Manual. By incorporating such manuals into the administrative rules, the department gives interested parties and the public general notice and an opportunity to comment on policies governing program eligibility. Additionally, as a result of the incorporation of such manuals into the administrative rules, the policies contained in the manuals have the force of law in case of litigation between the department and a program applicant or recipient concerning the eligibility of the applicant or recipient for program benefits.

ARM 37.80.101(13)(b) currently adopts and incorporates by reference the Montana Child Care Manual effective May 1, 2005. The department proposes to make some revisions to this manual that took effect on May 1, 2006. The

department proposes to revise sections 1-4a, 1-5, 1-9, 2-1, 6-2, 6-2a, 6-6, 6-8, 6-9, 6-13, 7-5a, 7-5b, and 7-5c of the Montana Child Care Manual.

The proposed amendments to ARM 37.80.101(13)(b) are therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies, and to offer suggested changes. The department intends that the manual amendments be applied retroactively to May 1, 2006. No detrimental effects are anticipated as a result.

Manuals and draft manual materials are available for review in each local Office of Public Assistance and on the department's website at www.dphhs.mt.gov. Following is a brief overview of the changes being made to each manual section for the Montana Child Care Manual. Unless otherwise noted, no fiscal impact is anticipated with these rule changes.

The department proposes updating the Child Care Manual, section 1-4a, at page 2 of 5, entitled "Children with Special Needs" to require approval by the Montana Statewide Inclusion Coordinator ["the coordinator"] of all increased rates for payment for child care with reference to children with special needs. The coordinator has expertise in the special needs area, and requiring the approval of the coordinator for such increases would ensure any rate increases are allowed only in appropriate circumstances. The fiscal impact of the proposed manual changes will likely save the department money by preventing inappropriate approval of increased rates for children with special needs.

The department proposes updating the Child Care Manual, section 1-5, to incorporate the August 1, 2006, Sliding Fee Scale. This scale was updated to coincide with 2005 Federal Poverty Guidelines. The department has determined that it is necessary to update the Sliding Fee Scale to ensure families in poverty have the ability to access public funding used to subsidize the child care assistance. The fiscal impact is \$288,600.

The department proposes updating the Child Care Manual, section 1-9, at page 1 of 8, entitled "Confidentiality" to set forth the correct address of its Early Childhood Services Bureau as P.O. Box 202925, 111 North Jackson Street, 5th Floor, Helena, MT 59620-2925.

The department proposes updating the Child Care Manual, section 2-1, entitled "Application Process" at page 8 of 12, bullet No. 3. This section sets forth the process that families must follow in order to receive child care subsidies, and the update requires Child Care Resource and Referral Eligibility Specialists to verify with parents at recertification the accuracy of the hours billed for the previous month of children care. This is accomplished by requiring parents to verify the accuracy of the child care provider's billing by reviewing and signing a copy of the most recent Explanation of Benefits Form. Requiring Child Care Resources and Referral Eligibility Specialists to review Explanation of Benefit Forms with the family at

recertification will likely save the department money by reducing the submission of false claims and by ensuring that claims are submitted accurately.

The department proposes striking Child Care Manual, section 2-1 at page 11 of 12, bullet No. 2, entitled "Presumptive Eligibility". The department has determined that contrary to the current provision of this section, it is not necessary for a parent to submit a Child Care Service Plan Form when submitting an initial application in order to receive presumptive 30 day eligibility, and that submission of the form is necessary only to approve a family for child care subsidy when the family has completed the entire application process and certification is approved.

The department proposes updating the Child Care Manual, section 6-2, entitled "Legally Unregistered Providers" at page 5 of 9, bullet No. 2, to state accurately the increased cost of FBI fingerprint background checks from a cost of \$32.00 to \$34.00; and at bullet No. 3 to state accurately the increased cost of Western Identification Network (WIN) fingerprint checks from \$8.00 to \$10.00. Background checks are required for applicants certified as Legally Unregistered Providers and Legally Unregistered In-home Providers, as well as for all adults living in the providers' household. Pursuant to this manual section, fingerprint background checks can be obtained under the FBI or the WIN system through the Montana Department of Justice by submitting a Department of Justice fingerprint card, as well as a check or money order made out to the Department of Justice for the cost of the respective background check. The department forwards the card and the check or money order to the Department of Justice. The manual changes reflect increased costs for the two background checks.

The department also proposes updating section 6-2, page 5 of 9, bullet No. 3, to add the state of Washington to the list of states that complete WIN fingerprint checks because the state of Washington was erroneously not included when the manual was revised on May 1, 2005. These manual changes will ensure the department recovers the full cost of completing fingerprint processes.

The department proposes updating the Child Care Manual, Section 6-2, at pages 4 and 6 of 9 to set forth the correct address of DPHHS Early Childhood Services Bureau as P.O. Box 202925, 111 North Jackson Street, 5th Floor, Helena, MT 59620-2925.

The department proposes creating in the Child Care Manual a section 6-2a, in response to "Dane's Law". Dane's Law became effective October 1, 2005, and makes it a felony for any employee, owner, household member, volunteer, or operator of a day care facility as defined in 52-2-703, MCA to administer either prescriptive or nonprescriptive medication to a child without the written consent of the child's parent, and prohibits the inappropriate administration of medications. It is necessary to apply Dane's Law to legally unregistered providers, and this newly proposed manual section will clarify the proper forms legally unregistered providers are required to have on file at each Child Care Resource and Referral.

The department proposes updating the Child Care Manual, section 6-6, entitled "Absent Day Policies - Maintaining Continuity of Care" at page 8 of 12 in order to clarify that the Child Care Resource and Referral should redetermine eligibility for a parent when a grace period has been approved, thus setting up a new certification plan.

The department proposes updating the Child Care Manual, section 6-8, entitled "Auditing and Investigations" at page 1 of 3, bullet No. 2, in order to clarify what should be included on a spreadsheet when comparing child care hours approved to what was invoiced in an investigation. The proposed manual change will allow the investigation process to be more consistent in each CCR&R district.

The department proposes updating the Child Care Manual, section 6-9, entitled "Corrections and Overpayments" at pages 3 and 7 of 9 to set forth the correct zip code of the department's fiscal accounts receivable as 59604-4210, and to clarify processes with regard to disposition of payments pertaining to eligibility specialists.

The department proposes updating the Child Care Manual, Section 6-13, entitled "Resources for CCR&R Eligibility Specialists" at page 2 and 3 of 21 to set forth the correct names, titles, and e-mail addresses of personnel and to set forth the correct address of the department's Early Childhood Services Bureau subsequent to the recent change of address of that bureau.

The department proposes updating the Child Care Manual, section 7-5a, entitled "Higher Education Merit Pay" at page 3 of 7 in order to correct some typographical errors.

The department proposes updating the Child Care Manual, section 7-5b, entitled "Higher Education Merit Pay" at page 2 of 8 to clarify a policy change for Higher Education Merit Pay application release dates and due dates. Under the "Higher Education Merit Pay" program, the department pays monetary incentives to people who are working in licensed or registered child care, Head Start, or resource and referral agencies, and who are enrolled in an early childhood course of study at an institution of higher education. Currently, applicants for this program may apply only during August and September, and they are informed in October as to whether their applications are approved or denied. In order to coordinate this program with the semester system used in Montana schools, the manual section is being changed to allow applications to be made available in April and submitted in June, and also to be made available in October and submitted in November. Applicants will be notified within one month of the due date for submission of the applications as to whether their applications are approved or denied.

The department proposes correction of typographical errors at page 4 of 8.

The department proposes updating the Child Care Manual, section 7-5c, entitled "Toddler Merit Pay" at page 1 of 6 in order to clarify that providers who have

successfully completed the 60 hour program in order to be certified as Infant/Toddler Caregivers are thereafter ineligible to participate in the Infant Toddler Merit Pay program.

ARM 37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT

The department proposes deleting (14) of ARM 37.80.202. The subject matter addressed in that subsection, that is changed in the household monthly copayment as based upon the child care assistance sliding fee scale, is otherwise incorporated into the administrative rules by reference in the Montana Child Care Manual, which is otherwise incorporated by virtue of the provisions of ARM 37.80.101(13).

ARM 37.80.203 REQUIREMENT TO REPORT CHANGES

The department proposes adding (2)(f) to ARM 37.80.203 in order to set forth accurately those changes in circumstances which an applicant for or recipient of child care assistance must report to the resource and referral agency administering the case. An applicant or recipient of child care assistance must make such a report to the resource and referral agency within ten calendar days from the date an applicant or recipient learns of any of the following changes in circumstances:

(a) Any change in compliance by the applicant or recipient with any order or determination of DPHHS Child Support Enforcement Division;

(b) Any change in the receipt of child support by the applicant or recipient pursuant to a district court order, including but not limited to changes in the frequency or the amount of child support received; or

(c) Any change in circumstances concerning good faith reasons for an applicant or recipient not to pursue child support enforcement through the department's Child Support Enforcement Division.

Specific requirements that parents report changes in child support matters will make it clear that child support requirements apply not only during the application period, but throughout the course of certification. No fiscal impact is anticipated with this rule change.

ARM 37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES; COMPLIANCE WITH EXISTING RULES, CERTIFICATION

The department proposes amending ARM 37.80.301(1) to refer accurately to ARM 37.95.101 through 37.95.1021 in referring to child care facilities being in compliance with licensing and registration requirements. The department discovered the current rule incorrectly refers to ARM 37.95.101 and 37.95.102. No fiscal impact is anticipated with this rule change.

ARM 37.80.501 TERMINATION OF CHILD CARE ASSISTANCE

The department proposes amending ARM 37.80.501(1) by adding subsection

(1)(i) under this rule in order to state that failure to comply with the department's Child Support Enforcement Division, failure to report changes in court-ordered child support received, and failure to report changes in circumstances regarding whether an applicant or recipient has "good cause" for not applying for child support through the Child Support Enforcement Division are grounds for termination of child care assistance. Adding such failures to comply to the list of reasons for termination of assistance makes it clear to parents the potential consequences of their not complying with child support requirements. No fiscal impact is anticipated with this rule change.

4. The department intends that the amendments to ARM 37.80.101, 37.80.202, 37.80.203, 37.80.301, and 37.80.501 to be applied retroactively to January 1, 2006. No detrimental effects are anticipated as a result. The adoption of Rule I and all other rule amendments are intended to become effective July 1, 2006.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 20, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Francis Clinch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State June 12, 2006.